

**BEFORE THE
NATURAL RESOURCES COMMISSION
OF THE
STATE OF INDIANA**

IN THE MATTER OF:

ENTOMOLOGY REPEALS)	Administrative Cause
)	Number 15-55E
)	
)	LSA Document #15-383

**REPORT ON RULE PROCESSING, PUBLIC HEARING AND HEARING OFFICER
ANALYSIS WITH RECOMMENDATION REGARDING FINAL ADOPTION**

1. RULE PROCESSING

Principally for consideration is a proposal to repeal 312 IAC 18-3-12 and 312 IAC 18-3-18 governing the quarantine of larger pine shoot beetle and emerald ash borer, respectively. In addition, the proposal repeals 312 IAC 18-3-20, governing the regulation of Brazilian elodea.

The original proposal to repeal 312 IAC 18-3-12 and 312 IAC 18-3-20 was previously preliminarily approved by the Natural Resources Commission ("*Commission*") in September of 2014, as Administrative Cause #14-400. The proposal was withdrawn and the preliminary adoption for the repeal of 312 IAC 18-3-12, 312 IAC 18-3-20, as well as 312 IAC 18-3-18 was preliminarily approved on May 19, 2015.

As to the proposed repeal of 312 IAC 18-3-12 and 312 IAC 18-3-20, Phil Marshall, State Entomologist & Forest Health Specialist, submitted to the Office of Management and Budget ("*OMB*") a request for an exception to the suspension of rulemaking action under the provisions of Executive Order 13-03 (FMC #2013-01) on April 30, 2014. In a letter dated May 1, 2014, Christopher D. Atkins, OMB Director, wrote that the Department's "request qualifies for an exception under Section 6(g) of Executive Order 13-03. Therefore, DNR may proceed with the rule as proposed in its April 30, 2014 submission."

As to the proposed repeal of 312 IAC 18-3-18, Phil Marshall, State Entomologist & Forest Health Specialist, submitted to the OMB a request for an exception to the suspension of

rulemaking action under the provisions of Executive Order 13-03 (FMC #2015-1) on February 27, 2015. In a letter dated February 27, 2015, Christopher D. Atkins, OMB Director, wrote that the Department's "request qualifies for an exception under Section 6(g) of Executive Order 13-03. Therefore, DNR may proceed with the rule as proposed in its February 26, 2015, submission."

The proposed rule was granted preliminary adoption by the Commission on May 19, 2015.

Pertinent portions of the May minutes follow:

Lt Sandra Jensen, Director of the Commission's Division of Hearings, presented this item and the following item (Item 7) together. She noted that in September 2014 the Commission granted preliminary adoption of the repeal of 312 IAC 18-3-12 governing larger pine shoot beetle quarantine and 312 IAC 18-3-20 governing Brazilian elodea. The Notice of Intent for these repeals was published in the *Indiana Register* under LSA Document #14-400. Jensen explained that LSA Document #14-400 has not moved forward in the rule adoption process.

Additionally, the Division of Entomology and Plant Pathology has subsequently requested to repeal 312 IAC 18-3-18 governing the emerald ash borer quarantine. As a result, the DNR is requesting the withdraw LSA Document #14-400, and would seek preliminary adoption (as referenced in Item 7) for the repeal of all three rule sections, 312 IAC 18-3-12, 312, 312 IAC 18-3-18, and IAC 18-3-20.

Doug Grant moved to withdraw LSA Document #14-400, the proposed repeal of 312 IAC 18-3-12 and 312 IAC 18-3-20. Jake Oakman seconded the motion. Upon a voice vote, the motion carried.

Consideration preliminary adoption of the repeal of 312 IAC 18-3-12, 312 IAC 18-3-18, and 312 IAC 18-3-20, governing the control of larger pine shoot beetle quarantine, emerald ash borer, and the regulation of Brazilian elodea, respectively; Administrative Cause No. 15-055E

[See discussion in previous agenda item.]

Doug Grant moved to approve for preliminary adoption of the repeal of 312 IAC 18-3-12, 312 IAC 18-3-18, and 312 IAC 18-3-20, governing the control of larger pine shoot beetle quarantine, emerald ash borer, and the regulation of Brazilian elodea, respectively. R. T. Green seconded the motion. Upon a voice vote, the motion carried.

The “Notice of Intent” to adopt the proposed rule amendment was posted to the INDIANA REGISTER database website as 20151111-IR-312150383NIA on November 11, 2015 (LSA Document #15-383). The notice identified Megan Abraham, Fumigation Compliance Officer, of the Department of Natural Resources Division of Entomology and Plant Pathology as the “Small Business Regulatory Coordinator” for purposes of Indiana Code § 4-22-2-28.1.

The Commission caused the information required by I.C. 4-22-2-22.5 to be included within the rulemaking docket maintained on its Internet website. The rulemaking docket has been updated throughout the rule adoption process.

Following the posting of the Notice of Intent on November 11, 2015, fiscal analyses of the rule proposal were submitted, along with a copy of the proposed rule language and a copy of the posted Notice of Intent, to the Office of Management and Budget on November 12, 2015, as specified by Executive Order 2-89, IC 4-22-2-19.5 and Budget Agency Financial Management Circular 2010-4. The material was also submitted to George Angelone, Legislative Council, on November 12, 2015. In a letter dated April 7, 2016, Brian E. Bailey, Director, State Budget Agency, recommended that the proposed rule changes be approved. The correspondence also states, “Furthermore, the statement and analysis (attached hereto) provided by the Indiana Natural Resources Commission is hereby adopted as the Office of Management and Budget’s own Fiscal Impact Statement for the purposes of satisfying the requirements under IC 4-22-2-28(d). Also, it is adopted as the Office of Management and Budget’s cost benefit analysis under IC 4-3-22-13(a).”

The Commission’s Division of Hearings submitted the proposed rule to the Legislative Services Agency (“LSA”) along with the “Statement Concerning Rules Affecting Small Business” (also known as the “Economic Impact Statement”) on April 8, 2016.

The Notice of Public Hearing was submitted to LSA on April 12, 2016. The Notice of Public Hearing was posted to the INDIANA REGISTER database website on April 27, 2016 (20160427-IR-312150383PHA) along with the Economic Impact Statement (20160427-IR-312150383EIA) and the text of the proposed rule (20160427-IR-312150383PRA). Following receipt of an “Authorization to Proceed” from LSA on April 13, 2016, the NRC Division of Hearings also

caused a Notice of Public Hearing to be published by the Indianapolis Newspapers, which publishes a newspaper of general circulation in Marion County, Indiana, on April 27, 2016. In addition, notice of the public hearing and a summary of the proposed rule changes were published on the Commission's web-based electronic calendar.

The Statement Concerning Rules Affecting Small Businesses (the "EIS"), as required under IC 4-22-2.1-5, and submitted by the Small Business Regulatory Coordinator, states:

Economic Impact Statement
LSA Document #15-383

IC 4-22-2.1-5 Statement concerning rules affecting small businesses
Estimated Number of Small Businesses Subject to This Rule:

Repeal of 312 IAC 18-3-12

Pursuant to 7 CFR 301.50-3(a) the Administrator of the U.S. Department of Agriculture (USDA) is authorized to quarantine "each State, or portion of a State, in which the pine shoot beetle has been found..." Regulated articles include pine products and articles, products and means of conveyance of the pine shoot beetle as specified in 7 CFR 301.50-2, and previously identified in 312 IAC 18-3-12(d). Less than the entirety of the State will be designated as a quarantined area only if the USDA Administrator determines that "the State has adopted and is enforcing a quarantine and regulations that impose restrictions on the intrastate movement of the regulated articles that are equivalent to those imposed by 7 CFR 301.50". 7 CFR 301.50-3(a.) The USDA prohibits, pursuant to 7 CFR 301.50-4, the movement of a regulated article originating from quarantined counties to a non-quarantined area except under a certificate or limited permit. Such certificate or limited permit may only be issued after confirmation of treatment or after inspection. 7 CFR 301.50-5.

To avoid imposition of the quarantine upon the entirety of the State, the Natural Resources Commission adopted 312 IAC 18-3-12 Control of larger pine shoot beetles in 1996 which was equivalent to the USDA requirements associated with regulated articles. Through 2013, a majority of Indiana Counties (73 of 92) are infested with pine shoot beetle. Also, through 2013, Pine Shoot Beetle has not produced any detectable damage impact to Indiana's pine resources. Thus, the continued implementation of this rule does not assist in the management efforts for this pest.

Removal of administrative code 312 IAC 18-3-12 will impact small business in the counties that are not currently under quarantine. These businesses will become subject to and need to abide by 7 CFR 301.50. Repeal of this rule will

only affect businesses that are selling pine products out of state. There are a total of four hundred and sixty nine (469) businesses in the counties not currently quarantined. A breakdown of the number of businesses that could potentially be impacted by county is located below.

There are only two sawmills that are selling pine materials. As long as the regulated material is processed before it is sold to companies in other states, these sawmills will not be impacted fiscally.

Of the 247 timber buyers located in this area, very few would be sourcing pine materials for shipment out of state due to the current trend in the industry to sell hardwood materials.

Christmas tree farms typically sell their materials on site and do not transfer materials across state lines.

DNR nursery inspectors have contacted nursery growers and nursery dealers in this area of the state and determined that less than 5% of these nurseries actually sell materials out of state on a regular basis and of these materials even less pine is sold.

It is estimated that only a few dozen businesses would be impacted by the removal of this rule, and only a small percentage of each company's business would be impacted.

Impacted Small Businesses by County and Type of Business.

	Nursery Grower	Nursery Dealer	Christmas Tree Farm	Sawmills	Timber Buyer	Total
Clark	6	23	2	0	4	35
Clay	0	5	0	0	8	13
Crawford	0	0	1	0	18	19
Daviess	2	2	0	0	15	19
Dubois	4	6	0	0	14	24
Floyd	2	2	0	0	10	14
Gibson	3	3	1	0	4	11
Greene	2	7	0	0	9	18
Harrison	4	4	0	0	27	35
Jackson	6	8	1	1	18	34
Jefferson	2	4	0	0	14	20
Knox	4	6	0	0	6	16
Lawrence	4	5	1	0	14	14
Martin	0	3	0	0	5	8
Ohio	0	0	0	0	1	1
Orange	3	4	0	0	11	18
Perry	0	2	0	0	11	13
Pike	0	3	1	0	6	10
Posey	0	2	0	0	1	3
Scott	5	4	1	1	9	20
Spencer	1	2	0	0	10	13
Sullivan	1	5	0	0	6	12
Vanderburgh	8	30	2	0	1	41
Warrick	4	6	0	0	5	15
Washington	5	7	1	0	20	33
Total	66	143	11	2	247	469

Repeal of 312 IAC 18-3-18

Several small businesses in Indiana will be impacted by the repeal of 312 IAC 18-3-18. Types of small businesses subject to this rule include: Nurseries/Nursery Dealers, Sawmills (Primary and Secondary), Logging Companies/Timber Buyers, Campgrounds, and Firewood Producers/Retailers. Repeal of the rule will impact eight counties. These eight counties included in 312 IAC 18-3-18, include approximately two hundred eighty nine (289) businesses which may be impacted to various degrees. Table B-1 lists the number of businesses by county and business type impacted.

Table B-1 Impacted Small Businesses by County and Type of Business.

County	Nursery/ Nursery Dealer	Sawmill (Primary)	Sawmill (Secondary)	Logging Company/ Timber Buyers	Firewood Producer/ Retailer	Campground	Total Small Business per County
Gibson	16	0	5	4	0	2	27
Knox	22	3	5	11	0	0	41
Pike	4	1	3	8	0	2	18
Posey	4	1	3	0	1	2	11
Spencer	4	0	1	20	2	5	32
Sullivan	6	2	6	3	1	2	20
Vanderburgh	65	2	34	1	0	0	102
Warrick	19	0	6	10	0	3	38
Total	140	9	63	57	4	16	289

Repeal of 312 IAC 18-3-20

With the implementation of 312 IAC 18-3-23 (August 2012), which governs prohibited invasive aquatic plants, no businesses are legally allowed to sell Brazilian elodea. The repeal of 312 IAC 18-3-20 would not place regulatory requirements on small businesses. Small businesses are subject to the standards at 312 IAC 18-3-23.

**Estimated Average Annual Reporting, Record Keeping, and Other
Administrative Costs Small Businesses Will Incur For Compliance:**

Repeal of 312 IAC 18-3-12

There will be no annual reporting, record keeping or other administrative costs associated to small businesses due to the repeal of this rule.

Repeal of 312 IAC 18-3-18

In order to process and move regulated material from areas that are not under the same quarantine restrictions, the small business may need to apply for and have in place compliance agreements approved by the USDA-APHIS, and may have to obtain certificates of inspection. Though the compliance agreement will be created and processed by the USDA-APHIS, the small business owner will need to initiate the process by applying for and meeting guidelines set by the compliance agreement. It is estimated that each business will incur a cost of 0.5

man days to complete the paperwork to initiate a compliance agreement. Repeal of the rule will not require businesses in the above counties to incur costs for compliance if they are moving regulated material within Indiana. Businesses in these counties (primarily sawmills, logging companies, and firewood producers) will only need a federal compliance agreement from the USDA/APHIS if they sell/move regulated items outside the quarantined area. Depending on the business in question, additional steps may be required to mitigate for Emerald Ash Borer before they can move/ sell under a federal permit. There is currently no federal restriction to move materials to any states adjoining Indiana.

With the entire state of Indiana under a federal quarantine, nurseries will no longer need to ensure that they keep accurate records of recipients of ash tree stock being sold within each county. The only potential economic impact to nurseries would be in moving ash trees outside the federally quarantined area. There is no anticipated cost for the nurseries (Table B-2) to maintain records of the sale of ash trees as most businesses in Indiana no longer grow these trees. Most nurseries in Indiana have destroyed their ash stock because of Emerald Ash Borer's movement through the state.

Repealing this rule will have little impact on sawmills and logging companies moving ash within the quarantined area as they will not be required to have compliance agreements. Sawmills that move regulated material to areas outside of the federal quarantine area will need to keep records of the origin of ash materials and how it is being mitigated. Logging Companies also need to keep records of the origin of ash, whether it has been mitigated, and where the ash is delivered or sold. Both Sawmills and Logging companies will need to provide shipping documents and inspection certificates for the sale and movement of ash outside the federal quarantine. They will also need to maintain records and have them available for inspection by the USDA/ APHIS. The repeal of this rule will not have any additional impact to these businesses as the federal rule already requires these steps for any business within Indiana. A very small number of sawmills or logging operations will move materials outside of the federally quarantined area as there are plenty of businesses to sell to within the quarantine.

Repeal of the rule will have little to no impact to private campgrounds. However, if they sell firewood that may leave the federally quarantined area or sell firewood that will be taken to DNR properties, businesses will need a compliance agreement and will be required to mitigate the firewood. The majority of campground owners will only sell firewood for use on their campground. The additional administrative cost for campgrounds is firewood management which includes training staff to ask campers if they brought firewood, exchanging firewood with campers and collection and burning of firewood left at campsites. These administrative costs are not the result of the quarantine but the result of Emerald Ash Borer presence near their campground as well as the DNR policy that requires any firewood entering state property to be under compliance. These businesses will choose whether or not they want to

mitigate their firewood and obtain a compliance agreement. Thus, there is no anticipated record keeping or administrative cost for campgrounds (Table B-2).

Repeal of the rule may have limited impact to firewood producers that move regulated materials outside of the federally quarantine area or into DNR properties. These businesses would require a compliance agreement with USDA/APHIS. An analysis by the Division of Entomology and Plant Pathology of registered businesses found four (4) firewood producers in these counties. To maintain and manage records, it is estimated that 0.5 man hours per shipment is required. The estimated number of man days for each firewood producer to maintain proper management of all records within the business is 0.5 man days per month. Assuming that the average employee earns fifteen dollars (\$15.00) per hour, the annual reporting and record keeping costs to each firewood producer would be \$720.00 per year. However the likelihood of any of these vendors selling firewood outside of the federally quarantined area is minimal. The repeal of the rule will not cause these businesses to incur additional expense as the federal quarantine already applies.

Table B-2: Estimated Average Annual Administrative Cost for Emerald Ash Borer Quarantine Compliance by Small Business Type.

Small Business Type: Assumptions for Administrative Costs.	Annual Average Administrative Cost:
Nursery/ Nursery Dealer: No administrative cost unless able to sell existing ash stock.	\$0.00
Sawmills/ Logging Companies: Maintenance/ management of records = 0.5 man days/ month.	\$0.00
Firewood Producer/ Retailer: Maintenance/ management of records = 0.5 man days/ month.	\$720.00
Campgrounds: No administrative cost unless selling firewood outside quarantined area.	\$0.00

Repeal of 312 IAC 18-3-20

There is no reporting, record keeping or administrative costs imposed on small businesses as a result of this rule repeal.

Estimated Total Annual Economic Impact on Small Businesses To Comply:

Repeal of 312 IAC 18-3-12

There would be no fiscal impact imposed on these businesses by the state of Indiana through the repeal of 312 IAC 18-3-12. However, a fiscal impact would be imposed by 7 CFR 301.50, the federal quarantine regulation. Federal compliance agreements and limited permits from USDA would be required to ship pine regulated materials out of state. Federal inspectors would conduct inspections of the material. Typically these measures do not impose any federal fees upon business. Costs to these small businesses would be incurred in the time to create and maintain the compliance agreement or limited permit and these costs are anticipated to be minimal.

Pine is not a high value product in comparison to other hardwood products sold by Indiana's lumber industry. Thus, it is likely that the methods required to mitigate pine

logs/lumber may not justify the continued out of state sale and the sawmill will not handle pine or sell only within Indiana.

Christmas tree growers would be required to have their pine Christmas trees inspected to sell and ship out of Indiana. If the pine Christmas trees are found to be infested, they would not be allowed to be sold out of state and instead would be required to stay in Indiana which is likely to happen.

Nursery growers and dealers selling pine nursery stock that is larger than 36 inches would be required to have their stock certified free of pine shoot beetle. The small number of businesses in the counties that will become subject to the federal quarantine that currently sell large pine trees may stop selling to out of state customers and sell in state. Or they may request federal inspection for shipments of pines going out of state. Or they may operate under a federal compliance agreement and use limited permits to move pine regulated material out of state (out of the federally quarantined area).

Repeal of 312 IAC 18-3-18

Nurseries and Nursery Dealers in Indiana have stopped sale of ash seedlings or trees due to the emerald ash borer's impact in the market. The trees cannot be sold and moved outside the quarantined area because the only methods to certify the tree free of the emerald ash borer would kill the tree. The impact of the emerald ash borer and the USDA/APHIS quarantine, which was instituted in 2006, has reduced if not completely eliminated the sale of ash trees in Indiana. Once the ash trees are removed, the nursery has no further impact from the quarantine, and will not have any economic impact to comply with the quarantine. The repeal of the rule is anticipated to have no impact.

If logs move during the flight period of the emerald ash borer, adult borers may emerge from the logs awaiting processing. If the logs move during the non-flight period of emerald ash borer to a sawmill and are not processed before the flight period, they are also a risk to spread emerald ash borer. Primary sawmills, those that process logs into sawn lumber, are a risk of spreading emerald ash borer from an infested forest. Secondary sawmills pose less of a threat of spread as these sawmills typically handle sawn lumber or other material that has already been mitigated in a manner that would decrease the likelihood of spreading emerald ash borer. Logging Companies/ Timber Buyers also pose a threat of spreading the emerald ash borer by moving infested trees. The economic impact to these small businesses would only apply if the small business in question handles ash material and chooses to move that material outside of the federally quarantined area.

The economic impact to Sawmills and Logging Companies/ Timber Buyers involves additions and changes to the business operation to comply with the federal quarantine in moving these logs across federal quarantine boundaries. These changes involve movement of logs from the forest to the sawmill outside of a quarantined area in a manner in compliance with the quarantine. It also involves handling and sawing of ash logs in a timely manner to comply with the quarantine. Currently they have to comply

with the federal quarantine. This repeal of the rule will have no additional impact and will eliminate impact at the state level.

It is estimated that no campgrounds would ask for a federal compliance agreements for firewood with the repeal of this rule, thus no impact is anticipated. It will be at the private campground owner's discretion as to whether firewood will be allowed to be imported. However, it is left to the discretion of the campground to determine whether or not to allow firewood to be brought onto their land.

The repeal of this rule will have no additional impact to firewood producers as they already have to comply with the federal quarantine if they move firewood out of the federally quarantined area.

Table B-1 lists the total number of small businesses that may be impacted by this rule in the counties that are proposed for quarantine. As stated above Nurseries/ Nursery Dealers and Campgrounds will not be impacted directly by the removal of this rule. Nurseries and Nursery Dealers have already been impacted by the imposition of the federal quarantine instated by the USDA/APHIS and most heavily impacted by consumer awareness of the emerald ash borer and the possibility/probability of this invasive species infesting ash trees in Indiana. Campgrounds will not be economically impacted directly by the removal of the rule. As shown in the Table B-3, Sawmills (primary and secondary) and Logging Companies/ Timber Buyers will not be impacted by the repeal of the rule. These companies will only be impacted if they move regulated materials across federal quarantine boundaries. Considering the current federal quarantine, most of the companies included in the table below will conduct the majority if not all of their business in the quarantined area.

The total potential economic impact to all small businesses in the proposed quarantined area is \$2,880.00, Table B-3. This analysis is based on the assumption that every firewood producer in the counties in question would require a compliance agreement, utilize regulated materials and move those materials across federal quarantine boundaries or into state parks.

Table B-3 Estimated Economic Impact to All Small Businesses in the Proposed Quarantined Area.

Business Type	Total # Small Business with Potential Impact in Counties Proposed for Quarantine	Cost per small Business	Total
Nursery/Nursery Dealers	140	\$0.00	\$0.00
Sawmill (Primary)	9	\$0.00	\$0.00
Sawmill (Secondary)	63	\$0.00	\$0.00
Logging Company/ Timber Buyers	57	\$0.00	\$0.00
Firewood Producer/ Retailer	4	\$720.00	\$2,880.00
Campgrounds	16	\$0.00	\$0.00
Total	289		\$2,880.00

Repeal of 312 IAC 18-3-20

There are no small businesses that will be impacted economically by this rule repeal.

Justification statement of requirement or cost:Repeal of 312 IAC 18-3-12

The continuing implementation of this rule does not assist in the management efforts of this pest. Nor does this rule assist the nursery or timber industry in allowing movement of pine regulated articles through Indiana. It currently restricts movement of pine regulated material to the 25 non-quarantined counties. Removal of the rule will allow movement of pine regulated materials throughout Indiana without federal or state restrictions or requirements. Only when movement of pine regulated material is to move out of the federally quarantined area would restrictions and regulations apply. This would be for movement into Kentucky and southern Illinois.

A few businesses will be impacted by removal of the rule as they will be subject to the federal pine shoot beetle quarantine to move pine regulated material out of state. The businesses in the 25 counties not currently quarantined will not be allowed to move pine regulated materials outside of Indiana without a permit. However the small number of businesses in these counties that may be impacted by the imposition of 7 CFR 301.50 on the entire state will be offset by a larger number of businesses that are more likely to sell these materials to other vendors within Indiana.

Repeal of 312 IAC 18-3-18

The reported value of ash logs processed through Indiana mills on an annual basis is over eight (8) million dollars, another three hundred and sixty-four (364) million dollars has been estimated to be invested in urban and street trees not on private property. Currently, emerald ash borer has been found in 84 counties in the state of Indiana. The Emerald Ash Borer has spread throughout the state of Indiana and it is likely that it will continue to spread to the remaining counties through natural spread and transportation of firewood and non-mitigated regulated items. The current infestation level of this pest in Indiana has reached a level by which imposing a regulatory quarantine will no longer assist in the management or control of this pest. Very few businesses will be impacted by the repeal of this rule. It is likely however that several businesses will be allowed to move materials easier without the restrictions put on them by the rule in its current format. At this point the businesses within the quarantine are unable to move regulated material to the counties in Table B1. The repeal of this rule will allow movement from the surrounding area into this area.

Repeal of 312 IAC 18-3-20

The Brazilian Elodea rule 312 IAC 18-3-20 is no longer needed as it has been replaced by 312 IAC 18-3-23. The justification for the rule regulating Brazilian elodea and other aquatic plants was addressed with adoption of 312 IAC 18-3-23. Justification for the requirement or cost is exemplified in the cost to eliminate Brazilian elodea, parrot feather, and hydrilla from water resources of Indiana.

Regulatory flexibility analysis of alternative methods:

Repeal of 312 IAC 18-3-12

The only alternative to removal of this rule is to continue to quarantine each county as it is found to be infested. At this point the continued implementation of this rule does not assist management measures in reducing the spread of this pest.

Repeal of 312 IAC 18-3-18

(A) Less stringent compliance or reporting requirements: Repeal of the rule will also remove any compliance or reporting requirements placed by the state of Indiana on the businesses within the quarantined area.

(B) Less stringent schedules or deadlines for compliance or reporting requirements: Repeal of the rule will remove any deadlines for compliance or reporting requirements.

(C) The consolidation or simplification of compliance or reporting requirements: Repeal of the rule will remove the requirements associated with reporting requirements.

(D) Establishment of performance standards: Repeal of the rule removes the requirement for performance standards.

(E) Exemption of small businesses from part or all of the requirements or costs: Each business operation is analyzed for the need to comply. Through analysis, the business operation may handle ash or ash products in a manner that complies with the federal rule. In this situation, they would be given a compliance agreement outlining the business operation and stating the operation method is in compliance with the federal rule. If the small business analysis finds that the business does not handle regulated material that will be shipped out of the federal quarantined area, the business does not need to meet the requirements of the federal rule and the federal rule has no impact. Analysis of the business is conducted upon request by DNR or USDA/ APHIS at no cost to the business. Repeal of the rule removes exemptions under state quarantine and subjects small business to exemptions under federal quarantine.

Repeal of 312 IAC 18-3-20

Not applicable.

In accordance with IC 4-22-2.1-5(c)(2), the Commission's Division of Hearings submitted the proposed rule amendments to repeal 312 IAC 18-3-12, 312 IAC 18-2-18 and 312 IAC 18-3-20, along with the Economic Impact Statements for each repeal to the Office of Small Business and Entrepreneurship. On May 10, 2016, Robert Warner, on behalf of the Office of Small Business & Entrepreneurship, found that "Based on the faces as presented, OSBE does not object to the economic or regulatory impact on small businesses associated with the proposed rule repeals."

2. REPORT OF PUBLIC HEARING AND COMMENTS

a) Public Hearing

A public hearing was conducted at the offices of the Natural Resources Commission, at the Indiana Government Center North, Indianapolis, Indiana on May 20, 2016, as scheduled. Dawn Wilson served as the hearing officer. The Department's Division of Entomology and Plant Pathology was present by Megan Abraham. Copies of the proposed rule amendment and the comments received from the Office of Small Business & Entrepreneurship were available for members of the public but no other individuals were in attendance.

b) Comments Received Outside Public Hearing

An opportunity was provided for members of the public to submit written comments until the comment period closed at midnight on May 20, 2016. The close of the public comment period was also posted on the Commission's online rule docket at <http://www.in.gov/nrc/2377.htm>. No public comments were received.

3. HEARING OFFICER ANALYSIS AND RECOMMENDATION REGARDING FINAL ADOPTION

Repeal of 312 IAC 18-3-12 Control of larger pine shoot beetles

This rule is no longer needed. The continued implementation of this rule does not assist management measures in reducing the spread of this pest. The SBRC, Megan Abraham, informed the hearing officer that, pursuant to 7 CFR 301.50, with the repeal of this rule, all Indiana counties will be subject to a regional federal quarantine of this pest. States surrounding Indiana are all included within the regional quarantine, with the exception of Kentucky.

Repeal of 312 IAC 18-3-18 Control of the emerald ash borer

This rule is no longer needed. The current infestation level of this pest in Indiana has reached a level by which imposing a regulatory quarantine will no longer assist in the management or control of this pest. SBRC Abraham informed the hearing officer that with the repeal of this rule, all Indiana counties will be subject to a regional federal quarantine of this pest. States surrounding Indiana are all included within the regional quarantine, imposing no restriction with moving materials to any state adjoining Indiana.

Repeal of 312 IAC 18-2-20 Regulation of Brazilian elodea, a pest or pathogen

This rule is no longer needed. In 2012, the Commission added a new rule, 312 IAC 18-3-23, identifying the Brazilian elodea as a prohibited invasive aquatic plant. In that rule, no business is legally allowed to sell Brazilian elodea.

The hearing officer presents the rule proposal to amend and repeal 312 IAC 18-3-12, 312 IAC 18-3-18 and 312 IAC 18-3-20. The proposed amendment identified as “Exhibit A”, to repeal the stated rules is appropriate and presented for final adoption.

Dated: June __, 2016

Dawn A. Wilson
Hearing Officer

EXHIBIT A

TITLE 312 NATURAL RESOURCES COMMISSION

Proposed Rule

LSA Document #15-383

DIGEST

Repeals 312 IAC 18-3-12 and 312 IAC 18-3-18 governing the quarantine of larger pine shoot beetle and emerald ash borer, respectively. Repeals 312 IAC 18-3-20 governing the regulation of Brazilian elodea. Effective thirty (30) days after filing with the Publisher.

312 IAC 18-3-12; 312 IAC 18-3-18; 312 IAC 18-3-20

SECTION 1. THE FOLLOWING ARE REPEALED: 312 IAC 18-3-12; 312 IAC 18-3-18; 312 IAC 18-3-20.